IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

State of Oklahoma, *et al.*, Plaintiffs, v. Tyson Foods, Inc., *et al.*, Defendants.	**Case No. 4:05-cv-00329-GKF-PJC**

SECOND ERRATA FOR EXPERT REPORT OF ANDY DAVIS, Ph.D.

I, Andy Davis, Ph.D., hereby state as follows:

1. I was retained by the law firm of Faegre & Benson LLP, on behalf of Cargill Inc. and Cargill Turkey Production LLC, to provide opinions in the matter of the *State of Oklahoma v. Tyson Foods Ince. Et al.* I provided an expert report on January 29, 2009 and errata on April 3, 2009. My opinions rely primarily upon total phosphorus concentrations in surface water samples rather then sediment samples. This errata corrects inadvertent errors. My overall conclusions and opinions remain unchanged.

2. In my analysis of total phosphorous concentrations in sediment samples, presented in my expert report and errata, I used an ACCESS database containing all the analytical results provided by the State. The data base column "measurement basis" was inadvertently omitted when I downloaded the database. I assumed that the total phosphorous measurements in river sediments (SEDT) provided in the ACCESS database was reported as dry weight measurements similar to the total phosphorous data measurements of lake sediments (SEDT). Therefore, my original evaluation of total phosphorus concentration in sediment samples was based on wet weight measurements.

3. I downloaded database columns for "measurement basis" and "total moisture content" for the total phosphorous concentrations in sediment samples. I have calculated the dry weight concentration of total phosphorous in relevant sediment samples by using

Cowls Exh # 2

the measured wet weight concentrations and the total moisture content values in the ACCESS data base. I then evaluated the dry weight total phosphorous concentrations in sediment samples using the same methods as the wet weight total phosphorous concentrations in sediment samples to determine baseline populations and elevated populations. There is no change in the overall conclusion that was originally determined using the wet weight sample data.

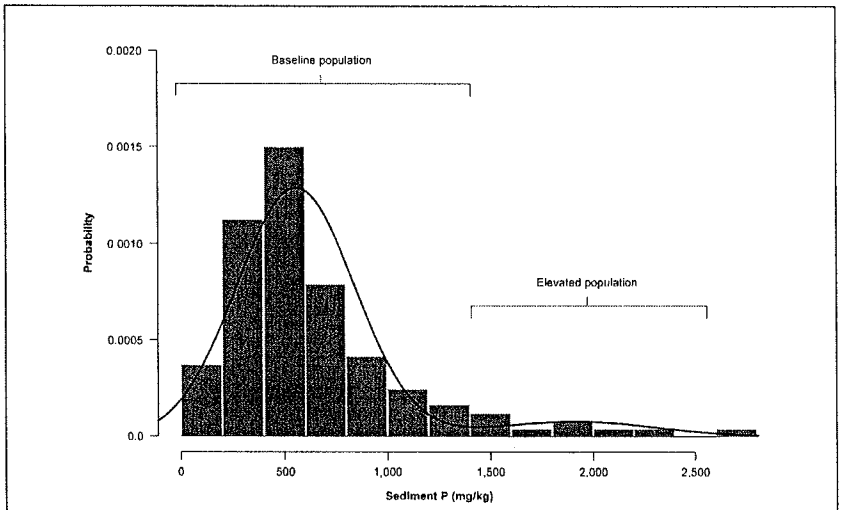
4. I recalculated the sediment baseline phosphorous concentrations utilizing calculated dry weight concentrations. The baseline and elevated populations remain clearly defined, separated at ~1400 mg/kg. Analyzing the groups separately indicates that the low concentration group comprises 92% of the population, with a mean concentration of 556 mg/kg; the high concentration group comprises 8% of the population, with a mean of 1911 mg/kg. Total phosphorous dry weight concentrations below 893 mg/kg are attributed to baseline conditions. Between 893 mg/kg and 1,400 mg/kg, the provenance (baseline or elevated) is unclear. Above 1,400 mg/kg, the sediment is considered elevated. Only two sediment samples relevant to my analysis have concentrations greater than 893 mg/kg, and only one sediment sample has a concentration above 1,400 mg/kg.

5. I compared the total phosphorous measurements of sediment samples (wet weight v. calculated dry weight) as shown in the attached table. The comparison table shows that when dry weight values are considered, sites AR-22, AR-27, and AR-28 are re-categorized as "sites where there appears to be no downgradient effect based on the relevant surface water sample data and/or sediment phosphorous (P) baseline data". In fact, there are no downgradient elevated dry weight total phosphorus concentrations in sediment samples at 34 of the 35 Cargill locations.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

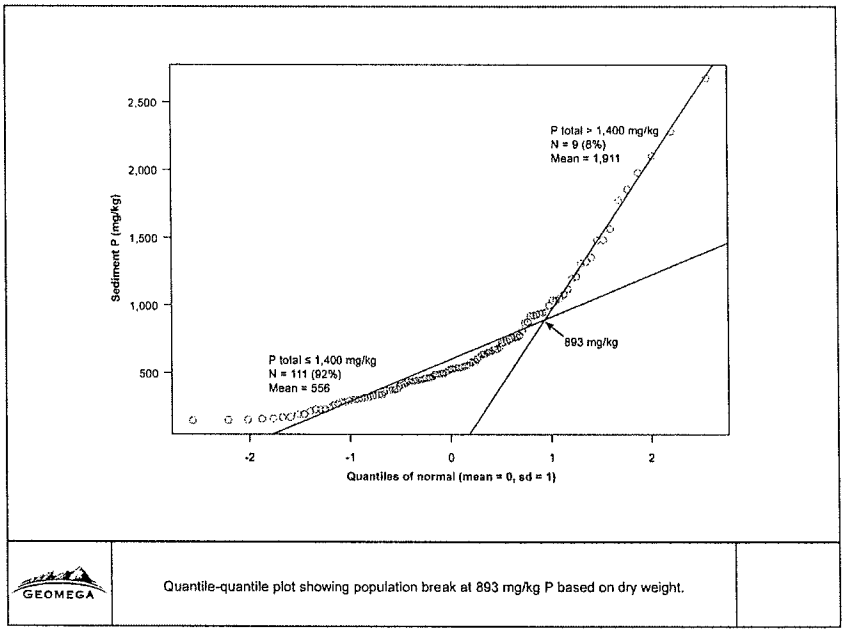
Executed on June 29, 2009

Andy Davis, Ph.D.



GEOMEGA

Histogram for sediment P showing bimodal population distribution based on dry weight.



GEOMEGA

Quantile-quantile plot showing population break at 893 mg/kg P based on dry weight.

Site Location	Wet Weight Value in mg/kg	Calculated Dry Weight Value in mg/kg	Population
OK-01	487	615	Baseline
OK-02	487	615	Baseline
OK-03	334/28	880/488	Baseline
OK-04	334	880	Baseline
OK-05	290	372	Baseline
OK-06	290	372	Baseline
AR-07	286	531	Baseline
AR-08	328	427	Baseline
AR-09	None	None	NA
AR-10	None	None	NA
AR-11	None	None	NA
AR-12	268	277	Baseline
AR-13	268	277	Baseline
AR-14	268	277	Baseline
AR-15	268	277	Baseline
AR-16	268	277	Baseline
AR-17	None	None	NA
AR-18	353	559	Baseline
AR-19	None	None	NA
AR-20	238/353	405/559	Baseline
AR-21	None	None	Baseline
AR-22	486	637	Baseline
AR-23	None	None	Baseline
AR-24	None	None	Baseline
AR-25	221	333	Baseline
AR-26	486	637	Baseline
AR-27	486	637	Baseline
AR-28	486	637	Baseline
AR-29	493/360	645/484	Baseline
AR-30	858/1092	1308/1817	Elevated
AR-31	328	427	Baseline
AR-32	365	508	Baseline
AR-33	365	508	Baseline
AR-34	650	877	Baseline
AR-35	None	None	NA

GEOMEGA

Comparison Table of the total phosphorous concentrations in sediment samples (wet weight v. calculated dry weight). Baseline is less than 893 mg/kg.